

**Board of Forestry and Fire Protection  
Range Management Advisory Committee (RMAC)  
Water Focus Group**

**Minutes  
May 16, 2006**

**Attending:**

**RMAC:**

Henry Giacomini  
Ken Zimmerman  
Mike Connor  
Clancy Dutra  
Neil McDougald  
Scott Carnegie  
Mel Thompson  
Jeff Stephens

**Representing**

California Farm Bureau Federation  
California Cattlemen's Association  
Public Member  
California Farm Bureau Federation  
California Cattlemen's Association  
California Forestry Association  
California Wool Growers Association  
CDF / RMAC Executive Secretary

**Also Attending:**

Gaylon Lee	State Water Control Board
Tony Francois	Farm Bureau Federation
Noelle Cremers	Farm Bureau Federation
Tracy Schohr	Cattlemen's Association
Michele Diaz	California Forestry Association
Ceci Dale-Cesmat	NRCS

**Items 1 and 2, Call to Order and Introductions:**

Henry Giacomini called the meeting to order at 10:00 AM. Introductions of all present were made.

**Item 3, State Water Resources Control Board Non-Point Source Pollution Policy and Regulations for grazing lands. Discussion of potential actions.**

Henry Giacomini stated that a primary function of the meeting is to address the response made by the SWRCB to the Board OF Forestry and Fire Protection, and the task assigned to RMAC by the Resource Protection Committee (RPC) for RMAC to construct a summary of findings in regards to the SWRCB's response.

Gaylon Lee was asked by Henry Giacomini to provide a status of the current situation with the SWRCB on the process of facilitated meetings with stakeholders

dealing with non-point source (NPS) pollution and grazing lands. Mr. Lee stated that they had initiated attempts at securing a contract with a facilitator for stakeholder meetings; however, the state is at the end of the budget cycle and will wait until next fiscal year to initiate a contract.

Clancy Dutra made comment of his concern that the documents under review do not reflect the fact that NPS pollution on grazing lands is not just a function of grazing. There are other contributors on grazing lands and the summary of findings should reflect this. Gaylon Lee agreed and stated that it is the intent of the SWRCB to include other factors.

Ken Zimmerman asked the question whether the Porter Cologne Act specifically states that voluntary compliance for NPS pollution is specifically excluded or whether it is a matter of SWRCB policy or interpretation that excludes voluntary compliance. Gaylon Lee responded that in his opinion voluntary compliance is not excluded; rather it is not authorized. Tony Francois was asked for his opinion on the same question. He responded by reviewing history of the SWRCB policy and the statutes from which it originated (Water Code Section 13369 being one mentioned). He concluded that the SWRCB position on the elimination of voluntary programs is a result of the SWRCB policy. He further noted that the statute under 13369 does mention Best Management Practices (BMPs) and non-regulatory compliance for the control of NPS pollution. Mr. Francois noted that in previous meetings regarding the formulation of NPS pollution policy by the SWRCB he did not detect the change in emphasis from a voluntary 3-tier approach which included voluntary NPS pollution programs to one which was purely regulatory.

Ken Zimmerman asked why RMAC and other stakeholders were not consulted on the formulation of SWRCB policy for NPS pollution given that all of these entities had a role to play in the development of the 3-tier system that allowed non-regulatory compliance. Gaylon Lee responded stating that he had reviewed comments submitted by Tony Francois during policy development, which identified the code sections allowing for non-regulatory compliance, and was essentially overruled by staff council. In addition Mr. Lee stated that he had made a presentation to the Board of Forestry indicating the changes being proposed with SWRCB NPS pollution policy.

Ken Zimmerman asked that in the event there is a discrepancy between the SWRCB NPS pollution policy and the statutes as identified by the RMAC member groups, then what is the process to make a correction. Gaylon Lee responded by stating that litigation and the legislature are potential courses of action. Further discussion confirmed that the SWRCB could act to change policy independent of litigation and legislation.

Gaylon Lee made the point that passage of SB 390 in the interim during development of SWRCB policy on NPS pollution had a lot to do with the SWRCB policy as written today. Tony Francois made the point that SB 390 and SB 923

were intended to deal with NPS pollution waivers on irrigated lands in the Central Valley, and that the sponsors of that legislation were not taking into account the effects these bills had on other laws and programs.

Michele Diaz stated that it would be her hope that the issue be brought before the SWRCB again with the information pertaining to the apparent conflict between statute and policy, in order to avoid litigation. There is a new Board Chair who may not be fully aware of all pertinent information that resulted in the present situation today regarding NPS pollution policy. Gaylon Lee agreed that this is a legitimate request.

Clancy Dutra made the point that the Water Quality Management Plan of 1995 was paid for by federal funds and signed by the SWRCB. It would appear by the manner by which the response letter is written that the authors are not aware of these facts. Gaylon Lee responded by making it clear that the signature on the 1995 Plan is one of certification that the contract is complete.

Mike Connor suggested that RMAC should recommend to the Board of Forestry that a more complete response should be provided by the SWRCB, but before that occurs RMAC should identify more precisely the issues in need of clarification by the SWRCB. He further asked that Tony Francois and others representing the RMAC member groups to assist in identifying those issues. Tony Francois agreed that such input could be prepared by the member groups.

Ken Zimmerman asked that RMAC consider involving Board of Forestry legal council since the response from the SWRCB was prepared by legal council. RMAC members in general agreed. Henry Giacomini stated that previous discussion with the Board's Executive Officer indicated Board Council would be able to review the RMAC response information (Summary of Findings), but would not be inclined to make a thorough review of all statutes pertinent to the issue of NPS pollution and SWRCB policy.

The question as to why NPS pollution on grazing lands has come to light now was raised by Tracy Schohr. Discussion among RMAC members, Gaylon Lee, and the member groups revealed that SWRCB did not have staff or time to address every aspect of NPS pollution in years past, and that specifically a more recent request from the Lahontan Regional Water Quality Board to the SWRCB had been received to address NPS pollution on grazing lands in a programmatic way.

Tony Francois raised the issue of whether the SWRCB intends to regulate every NPS pollution source and do they have the resources to accomplish a task of this magnitude? Noelle Cremers noted that in a meeting with the SWRCB Chair that the intent is to focus on areas of greatest concern. Tony Francois asked for the appropriate contact to raise these issues with the SWRCB. Gaylon Lee suggested Tom Howard, SWRCB Assistant Executive Officer.

Henry Giacomini posed the question to RMAC as to how dose RMAC proceed with developing a summary of findings. Tony Francois suggested that for the first report RMAC send an issues paper for the June Board of Forestry meeting, and follow-up with an actions paper at a later meeting. This lead to discussion of two primary issues of concern identified within the SWRCB letter of response. (1) The statement found on page 2 under "Response" stating "While voluntary compliance is allowed under the federal Clean Water Act (CWA), it is not consistent with State law." This statement was not viewed by RMAC as being correct. (2) Same page and Paragraph – "The Implementation Policy clearly states that all current and proposed [NPS] discharges must be regulated under [waste discharge requirements], waivers of [waste discharge requirements], or a basin plan prohibition, or some combination of these administration tools." RMAC concluded that the policy does not contain this statement.

Henry Giacomini provided a summary of what he felt was important conclusions of the meeting thus far:

1. The SWRCB letter of response is in conflict with the SWRCB Implementation Policy and state law.
2. RMAC desires a review of the pertinent statutes and RMAC findings by the Board of Forestry Legal Council.
3. Request agenda time with the SWRCB to present the findings.

Gaylon Lee made the following recommendation: Given that 13369 authorizes "non-regulatory implementation" two specific questions for the SWRCB should be asked.

1. How does the Porter Cologne Act preclude or prohibit voluntary compliance?
2. In what way is voluntary compliance actually inconsistent with State law?

In subsequent discussion Gaylon Lee clarified that under the Porter Cologne Act there are what is referred to as capital "P" policies. These are policies that carry with them the authority of regulation as opposed to an internal policy that is pertinent to the agency. The 2004 Implementation Policy is a capital "P" policy.

It was agreed for RMAC to adjourn from 12:00 to 1:30 PM allowing the member group representatives to provide written observations on the SWRCB letter of response.

Meeting reconvened at 1:30 PM.

Henry Giacomini called the meeting back to order and asked Tony Francois to present the written observations that the member group representatives had prepared during the break. Tony Francois led the discussion. This included an explanation of the options available to the SWRCB for enforcement of law and policy dealing with NPS pollution, which includes Waste Discharge Requirements,

Waivers, and Prohibitions. He made the point that in addition to these options law does not prohibit conditions whereby there may be a prohibition against NPS pollution discharges, unless the landowner is part of the 1995 Rangeland Water Quality Plan. He also cited examples in Imperial County where conditional programs are functioning.

Tony Francois stated that he expected the SWRCB response to identify portions of the 1995 Water Quality Plan that are deficient, and new language that should be included in order to bring the 1995 Rangeland Plan into compliance. He recommended that this issue be presented to the RPC as a follow-up question to SWRCB.

Tony Francois then addressed the second question asked by the Board of Forestry. He made the point that because the state devised Tiers 1-3 as a means of complying with federal law under Porter-Cologne, that Tier 1 is not merely an option. It is in fact required as part of compliance with federal law.

Tony Francois continued with the discussion summarizing where in the opinion of the member group representatives the SWRCB response to the Board of Forestry contained information that is not accurate or in need of explanation of how it was developed. He stated that a more polished version with the groups listed that support its content could be brought before the meeting of the full RMAC the next day.

Henry Giacomini asked the Focus Group what is their pleasure in dealing with the report by the member group representatives. Mike Connor recommended that RMAC use the information presented by Tony Francois to develop a letter to RPC addressing the issues identified by the member group representatives. Ken Zimmerman noted that the time frame for writing and reviewing a letter to the RPC by June 6 is very short. Jeff Stephens recommended that a conference call on June 2<sup>nd</sup> with 10 days notice be conducted to settle on final content of the RMAC letter to the RPC. The letter could be circulated prior to the call and voted upon by phone. RMAC agreed to bring this strategy forward to the full RMAC at tomorrow's session.

#### **Item 4, New and Unfinished Business:**

None

#### **Item 4, Public Comment:**

None

Meeting Adjourned at 2:35 PM.